STATUS OF THE CLAIMS

Claims 1-15 are pending in the application and have not yet been allowed by Examiner. Claims 1-15 were provisionally elected with traverse. Claims 16-22 have been withdrawn from further consideration further to the provisional election. Applicant respectfully requests to rejoin the withdrawn claims when the elected claims are finally allowed by Examiner.

Applicant presents new claims 23-39 herein. The new independent claims are claims 23, 33, 36, and 38.

REMARKS

Section 103 Issues

Examiner rejected all pending claims under Section 103(a) as being unpatentable over Tokushige (claims 1-5, 10-11, and 13-15); Tokushige in view of Suzuki (claim 6); Tokushige in view of Ikado (claims 7, 8, and 12); and Tokushige in view of Ikado and Lee (claim 9). Applicant respectfully submits that Tokushige in view of the cited secondary references do not establish a prima facie case of obviousness for the claims, as amended.

Tokushige in combination with the cited secondary references do not teach or suggest a thermoplastic multi-layer firm comprising at least a core layer which comprises about 60 wt.% to about 95 wt.% of a first polylactic acid having a first D-lactic acid level from about 1 mole % to about 8 mole %, and about 5 wt.% to about 40 wt.% of a toughening additive selected from the group consisting of metallocene plastomers, styrene-ethylene-butene-styrene (SEBS) block copolymers, polyethylene succinate, polybutylene succinate/adipate, polybutylene succinate/carbonate, polyurethane, and mixtures thereof, as claimed.

First, although it is admitted that Tokushige fails to disclose a D-lactic acid level of 1 mol. % to 8 mol. % in the core layer, Examiner takes the position that such lactic acid level

would also be readily determined through routine optimization by one having ordinary skill in the art. Applicant respectfully disagrees. The level of D-lactic acid is demonstrated as being critical to the invention. As shown in Table I of the Examples, as the amount of D-lactic acid is increased in the core layer, the data clearly show a dramatic increase in the elongation to break in the machine direction. On this basis, Applicant submits that this data negates any indicia of obviousness of the claimed invention.

Second, although it is further admitted that Tokushige fails to teach a multi-layer film, Examiner takes the position that the number of film layers (as well as the amount of polycaprolactone and film thickness) would be readily determined through routine optimization by one having ordinary skill in the art. Applicant submits that at the time the invention was made, there was no reasonable expectation of success to modify Tokushige or Ikada (single layer films) to reach the claimed multi-layer film (claims 24-39). There is no teaching or even a suggestion in any of the cited references that a multi-layer film may be used for a sleeve label as claimed.

Moreover, it is not within the general knowledge of one skilled in the pertinent art to use the multi-layer film of this invention for a sleeve label as claimed. This conclusion is supported by the fact that the disclosed process for producing the multi-layer film of the claimed invention required much more than routine optimization (see Specification at page, 6, lines 19-26). The disclosed process has higher processing temperatures and higher stretching ratios than that disclosed in Ikado (col. 5, lines 46-51), indicating that more than mere optimization was required to reach the claimed invention.

Section 112 Issues

Applicant believes that the claims, as amended, address all outstanding Section 112 issues raised by Examiner in the referenced Action.

* * *

It is respectfully submitted that the above Amendment and Remarks places the case in order for allowance or in better condition for consideration on appeal. Entry of the Amendment and early allowance of the claims, as amended, are therefore respectfully requested.

Respectfully submitted,

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